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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,323	02/17/2004	David Szymanski	INDI 200002US01	1107
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FAY SHARPE LLP 1228 Euclid Avenue, 5th Floor The Halle Building Cleveland, OH 44115			EXAMINER DENTER, CLARK F	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/780,323

Applicant(s)

SZYMANSKI, DAVID

Examiner

Clark F. Dexter

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-27,29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) 11,17,21,22,25-27,29 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-10,12-16,18-20,23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The Appeal Brief filed on December 23, 2009 has been entered. Upon careful reconsideration, new grounds of rejection under 35 USC 112 are required as well as a modified prior art rejection over Raetz to account for the specific range of taper angles. Any inconvenience caused by this action is regretted. Because the new grounds of rejection were not necessitated by applicant's response (i.e., the Appeal Brief), this Office action is being made **non-final**.

Status of Amendments

2. The following is a statement regarding the amendments filed after Final rejection:

The first amendment after final rejection filed on November 5, 2008, which was initially entered (see the Advisory action mailed on January 9, 2009), has not been entered because subject matter was apparently inadvertently removed from claim 1 (see the Advisory action mailed April 8, 2009). Applicant filed a second amendment after final rejection on September 8, 2009, which is a corrected version of the first after-final amendment. The second after-final amendment was not entered due to minor informalities (see the Advisory action mailed on November 20, 2009). Further, contrary to appellant's remarks in the Appeal Brief, an after-final amendment was not received with the current Appeal Brief.

Claim Objections

3. Claims 15 and 18 are objected to because of the following informalities:

In claim 15, line 5, the recitation "wherein said cutting member and seat surface consists" is improper, and it seems that "and seat surface consists should be changed to --and said seat surface each consists--.

In claim 18, line 6, "an mating" is improper.

Appropriate correction is required.

Claim Rejections - 35 USC § 112, 2nd paragraph

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 16, 18, 19, 20, 23 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 7-8, the recitation "relative to a direction of chain travel" renders the claim vague and indefinite since the structure of the link is being positively defined in terms of the chain which is not set forth as part of the claimed invention.

In claim 16, lines 3-4, the recitation "relative to a direction of travel of said cutting member" is vague and indefinite as to how the angle is measured since it is being measured in terms of an intended use of the cutting member and not to relative structure of the claimed invention; in lines 4-5, the recitation "comprising no more than 0.5° to a mating taper of a base member" is vague and indefinite since the cutting

member is being positively defined in terms of the base member which is not part of the claimed invention.

In claim 18, lines 4-5, the recitation "relative to a direction of travel of the base member when fastened on the chain" renders the claim vague and indefinite since the base member is being positively defined in terms of the chain which is not set forth as part of the claimed invention; in lines 5-6, the recitation "comprising no more than 0.5° to a mating taper of a cutting member" is vague and indefinite since the base member is being positively defined in terms of the cutting member which is not part of the claimed invention.

In claim 19, line 4, the recitation "relative to the direction of travel of the chain" renders the claim vague and indefinite since the structure of the link is being positively defined in terms of the chain which is not set forth as part of the claimed invention; in lines 7-8, the recitation "relative to a direction of chain travel" renders the claim vague and indefinite since the structure of the link is being positively defined in terms of the chain which is not set forth as part of the claimed invention.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Rejections Over Wright:

7. Claims 1-3, 6-9, 12, 15, 18-20, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over one of Wright, pn 4,744,278 in view of Funakubo, pn 3,800,633.

Regarding claims 1-3, 6-9 and 12, Wright discloses a **link** for a saw chain with almost every structural limitation of the claimed invention including:

a base member (e.g., 52) adapted to be pivotally connected to other links of the saw chain (e.g., member 52 is "adapted" in that it has pivot openings 57 and is fully capable of being pivotally connected to other structure including various forms of other links), said base member comprising a seat surface having a first taper (e.g., the upper surface of 65 as viewed in Fig 7); and

a cutting member (e.g., 54) that comprises a cutting edge and releasably engages said base member, said cutting member including a surface having a second taper, wherein said first taper and said second taper extend at an angle ranging from about 0.5 to about 45 degrees relative to a direction of chain travel at a close tolerance effective to cause self-locking engagement of said first taper of said seat surface and said second taper of said cutting member surface;

[claim 2] wherein said close tolerance comprises no more than about 1 degree (as best understood);

[claim 3] wherein said close tolerance comprises no more than 0.5 degrees (as best understood);

[claim 12] wherein at least one of said cutting member and said base member comprises a water-resistant material applied by a process selected from the group consisting of steam treatment, resin infiltration, copper infiltration and loctite infiltration (e.g., the base material in Wright is disclosed as "investment case of hard, high strength steel" which is a water-resistant material, and because the product is disclosed, the process by which the product is made is not critical).

Regarding claim 15, Wright discloses a **link** for a saw chain with almost every structural limitation of the claimed invention including:

a base member (e.g., 52) adapted to be pivotally connected to other links of the saw chain (e.g., member 52 is "adapted" in that it has pivot openings 57 and is fully capable of being pivotally connected to other structure including various forms of other links), said base member comprising a seat surface (e.g., the upper surface of 65 as viewed in Fig 7); and

a cutting member (e.g., 54) that comprises a cutting edge and releasably engages said seat surface of said base member.

Regarding claim 18, Wright discloses a **base member** (e.g., 52) with almost every structural limitation of the claimed invention including:

a seat surface (e.g., the upper surface of 65 as viewed in Fig 7) having a taper extending at an angle ranging from about 0.5° to about 45° relative to a direction of travel of the base member when fastened on the chain (e.g., the base member is fully capable of being positioned in such an orientation, particularly based on what structure it is attached/mounted), said taper having a close tolerance comprising no more than

0.5° to an mating taper of a cutting member (e.g., as best understood, particularly given that the cutting member is not part of the claimed base member);

Regarding claims 19, 20, 23 and 24, Wright discloses a **link** for a saw chain with almost every structural limitation of the claimed invention including:

a base member (e.g., 52) adapted to be pivotally connected to other links of the saw chain (e.g., member 52 is "adapted" in that it has pivot openings 57 and is fully capable of being pivotally connected to other structure including various forms of other links), said base member comprising a seat surface (e.g., the upper surface of 65 as viewed in Fig 7) having a first taper and a stop surface (e.g., the rightmost upper vertical surface as viewed in Fig. 7) located upstream of said seat surface relative to the direction of travel of the chain; and

a cutting member (e.g., 54) that comprises a cutting edge and releasably engages said seat surface of said base member, said cutting member including a surface having a second taper (e.g., at 66), wherein said first taper and said second taper extend at an angle ranging from about 0.5° to about 45° relative to a direction of chain travel at a close tolerance effective to cause locking engagement of said first taper of said seat surface and said second taper of said cutting member surface;

[claim 20] wherein said close tolerance comprises no more than 0.5 degrees (as best understood);

[claim 23] wherein said first taper and said second taper extend upwardly or downwardly from a location near said cutting edge in a direction opposite to said direction of chain travel;

[claim 24] wherein said angle is about 10 degrees or less.

Wright lacks the specific material designations for each of the base member and the cutter member, as follows:

[claim 1] the link of a saw chain wherein said surface has the second taper constructed from sintered and compacted particles of abrasion resistant material;

[claim 6] wherein said base member comprises sintered and compacted particles of abrasion resistant material;

[claim 7] wherein said abrasion resistant material comprises at least one of metal and ceramic;

[claim 8] wherein said abrasion resistant material comprises a carbide containing compound;

[claim 9] wherein said carbide containing compound comprises a compound selected from the group consisting of tungsten carbide, silicon carbide, tantalum carbide and aluminum carbide;

[claim 15] wherein said cutting member consists essentially of sintered and compacted particles of abrasion resistant material;

[claim 18] wherein said base member consists essentially of sintered and compacted particles of abrasion resistant material;

[claim 19] said cutting member comprises sintered and compacted particles of abrasion resistant material.

However, it is respectfully submitted that the use of such material on cutting teeth is old and well known in the art. For example, Funakubo discloses one example of a

disclosure that discusses many of the claimed materials (e.g., see col. 1, the paragraph beginning at line 6) including the materials set forth in the subject claims, and teaches that these materials have been used for their known benefits including improved durability and strength characteristics. Therefore, it would have been obvious to one having ordinary skill in the art to use the subject materials to make the cutters of Wright for the well known benefits including those described above.

Rejections Over Raetz:

8. Claims 1-3, 6-9, 13-16, 18-20, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raetz, pn 3,547,167 in view of Funakubo, pn 3,800,633 **or in the alternative** over Raetz, pn 3,547,167 in view of Funakubo, pn 3,800,633 and Wright, pn 4,774,278.

Regarding claims 1-3 and 6-9, Raetz discloses a **link** (e.g., 3) for a saw chain with almost every structural limitation of the claimed invention including:

a base member (e.g., 5 including 6, 7) adapted to be pivotally connected to other links of the saw chain (e.g., member 5 is "adapted" in that it has pivot openings (through which components 4 extend) and is fully capable of being pivotally connected to other structure including various forms of other links), said base member comprising a seat surface (e.g., 7 including surfaces 18, 19; see also col. 3, lines 36-37) having a first taper; and

a cutting member (e.g., 9) that comprises a cutting edge and releasably engages said base member, said cutting member including a surface having a second taper,

wherein said first taper and said second taper extend at an angle ranging from about 0.5 degrees to about 45 degrees relative to a direction of chain travel (e.g., the link including the cutting member is fully capable of being oriented at substantially any angle based on the type of operation desired by the user and based on any type or form of supporting structure provided therefor; also, the taper of feature 7 of Raetz is considered to meet the “about” language set forth for the angle range; or see “in the alternative” at the end of this rejection) at a close tolerance effective to cause self-locking engagement of said first taper of said seat surface and said second taper of said cutting member surface;

[claim 2] wherein said close tolerance comprises no more than about 1 degree (as best understood);

[claim 3] wherein said close tolerance comprises no more than 0.5 degrees (as best understood);

Regarding claims 13 and 14, Raetz discloses every structural limitation of the claimed invention including:

a **saw chain** comprising a plurality of the quick change cutting links of claim 1;

[claim 14] wherein said saw chain is adapted for use on a saw comprising a chain saw, a timber harvester, a buck saw and a saw for cutting wood pallets.

Regarding claim 15, Raetz discloses a **link** (e.g., 3) for a saw chain with almost every structural limitation of the claimed invention including:

a base member (e.g., 5 including 6, 7) adapted to be pivotally connected to other links of the saw chain (e.g., member 5 is “adapted” in that it has pivot openings (through

which components 4 extend) and is fully capable of being pivotally connected to other structure including various forms of other links), said base member comprising a seat surface (e.g., 7 including surfaces 18, 19; see also col. 3, lines 36-37); and

a cutting member (e.g., 9) that comprises a cutting edge and releasably engages said seat surface of said base member.

Regarding claim 16, Raetz discloses a **cutting member** (e.g., 9) for a saw chain with almost every structural limitation of the claimed invention including:

a cutting edge and an interior recess (e.g., the interior recess formed between surfaces 18 and 19) having a surface having a taper extending at an angle ranging from about 0.5° to about 45° relative to a direction of travel of said cutting member when fastened on a chain (e.g., the cutting member is fully capable of being oriented at substantially any angle based on the type of operation desired by the user and based on any type or form of supporting structure provided therefor; also, the taper of feature 7 of Raetz is considered to meet the "about" language set forth for the angle range; or see "in the alternative" at the end of this rejection), said taper having a close tolerance comprising no more than 0.5° to a mating taper of a base member (e.g., as best understood, the cutting member is fully capable of having such a taper particularly given a suitable base member, wherein the base member is not part of the claimed cutting member).

Regarding claim 18, Raetz discloses a **base member** (e.g., 5 including 6, 7) for a saw chain with almost every structural limitation of the claimed invention including:

a seat surface (e.g., 7 including surfaces 18, 19; see also col. 3, lines 36-37) having a taper extending at an angle ranging from about 0.5° to about 45° relative to a direction of travel of the base member when fastened on the chain (e.g., the base member is fully capable of being positioned in such an orientation, particularly based on what structure it is attached/mounted; also, as described in col. 3, lines 1-3, the longitudinal cross section of the cutter passage 14 corresponds to the longitudinal cross section of the stud 7, which may be tapered as described in col. 3, lines 36-37; the taper of feature 14 of Raetz is considered to meet the "about" language set forth for the angle range; or see "in the alternative" at the end of this rejection), said taper having a close tolerance comprising no more than 0.5° to an mating taper of a cutting member (e.g., as best understood, the base member is fully capable of having such a taper particularly given a suitable cutting member, wherein the cutting member is not part of the claimed base member);

Regarding claims 19, 20, 23 and 24, Raetz discloses a link (e.g., 3) for a saw chain with almost every structural limitation of the claimed invention including:

a base member (e.g., 5 including 6 and 7) adapted to be pivotally connected to other links of the saw chain (e.g., member 5 is "adapted" in that it has pivot openings (through which components 4 extend) and is fully capable of being pivotally connected to other structure including various forms of other links), said base member comprising a seat surface (e.g., 7 including surfaces 18, 19; see also col. 3, lines 36-37) having a first taper and a stop surface (e.g., one of the various surfaces as viewed in Fig. 1) located upstream of said seat surface relative to the direction of travel of the chain; and

a cutting member (e.g., 9) that comprises a cutting edge and releasably engages said seat surface of said base member, said cutting member including a surface having a second taper, wherein said first taper and said second taper extend at an angle ranging from about 0.5° to about 45° relative to a direction of chain travel (e.g., the link including the cutting member is fully capable of being oriented at substantially any angle based on the type of operation desired by the user and based on any type or form of supporting structure provided therefor; also, the taper of feature 7 of Raetz is considered to meet the “about” language set forth for the angle range; or see “in the alternative” at the end of this rejection) at a close tolerance effective to cause locking engagement of said first taper of said seat surface and said second taper of said cutting member surface;

[claim 20] wherein said close tolerance comprises no more than 0.5 degrees (as best understood);

[claim 23] wherein said first taper and said second taper extend upwardly or downwardly from a location near said cutting edge in a direction opposite to said direction of chain travel;

[claim 24] wherein said angle is about 10 degrees or less.

Raetz lacks the specific material designations for each of the base member and the cutter member, as follows:

[claim 1] the link of a saw chain wherein said surface has the second taper constructed from sintered and compacted particles of abrasion resistant material;

[claim 6] wherein said base member comprises sintered and compacted particles of abrasion resistant material;

[claim 7] wherein said abrasion resistant material comprises at least one of metal and ceramic;

[claim 8] wherein said abrasion resistant material comprises a carbide containing compound;

[claim 9] wherein said carbide containing compound comprises a compound selected from the group consisting of tungsten carbide, silicon carbide, tantalum carbide and aluminum carbide;

[claim 15] wherein said cutting member consists essentially of sintered and compacted particles of abrasion resistant material;

[claim 16] wherein said cutting member consists essentially of sintered and compacted particles of abrasion resistant material;

[claim 18] wherein said base member consists essentially of sintered and compacted particles of abrasion resistant material;

[claim 19] said cutting member comprises sintered and compacted particles of abrasion resistant material.

However, it is respectfully submitted that the use of such material on cutting teeth is old and well known in the art. For example, Funakubo discloses one example of a disclosure that discusses many of the claimed materials (e.g., see col. 1, the paragraph beginning at line 6) including the materials set forth in the subject claims, and teaches that these materials have been used for their known benefits including improved

durability and strength characteristics. Therefore, it would have been obvious to one having ordinary skill in the art to use the subject materials to make the cutters of Wright or Raetz for the well known benefits including those described above.

In the alternative, if it is argued that there is no specific disclosure of the claimed taper angle of the stud 7 and the corresponding passage 14 of cutting member 9, the Examiner takes Official notice that to provide taper angles within the claimed range for fitting cutting teeth to their support structure is old and well known in the art and provides various well known benefits including a self-locking as well as a self-releasing characteristic as taught by Wright (e.g., see col 8, lines 47-61). Therefore, it would have been obvious to one having ordinary skill in the art to provide tapered surface in the claimed range to gain the well known benefits including those described above.

Further Rejections Over Wright or Raetz:

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Wright, pn 4,744,278 in view of Funakubo, pn 3,800,633; **and** over the combination of Raetz, pn 3,547,167 in view of Funakubo, pn 3,800,633 **or in the alternative** over Raetz, pn 3,547,167 in view of Funakubo, pn 3,800,633 and Wright, pn 4,774,278 as the above combinations have been applied to claim 1 above, and further in view of any one of Ackley, pn 2,725,083 or Abbott, pn 2,873,775 or Oehrli, pn 3,144,059 or Ehlen, pn 3,308,859 or Carlton, pn 4,901,613.

Each combination lacks:

[claim 5] wherein said base member comprises stamped metal.

However, the Examiner maintains the taking of Official notice that such materials are old and well known in the art and provide various well known benefits including superior strength and durability. Ackley (col. 2, lines 51-53), Abbott (col. 2, lines 9-11), Oehrli (col. 8, lines 43-44), Ehlen (col. 2, lines 41-43) and Carlton (col. 3, lines 60-61) each disclose examples of links having components made from stamped metal. Therefore, it would have been obvious to one having ordinary skill in the art to use the subject materials to make the cutters of Wright or Raetz for the well known benefits including those described above.

It is noted that the common knowledge or well-known in the art statement of the previous office action has been taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. See MPEP § 2144.03.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Wright, pn 4,744,278 in view of Funakubo, pn 3,800,633; **and** over the combination of Raetz, pn 3,547,167 in view of Funakubo, pn 3,800,633 **or in the alternative** over Raetz, pn 3,547,167 in view of Funakubo, pn 3,800,633 and Wright, pn 4,774,278 as the above combinations have been applied to claim 1 above, and further in view of any one of Dawson, pn 3,023,490 or Gaddis et al., pn 4,750,396.

Each combination lacks:

[claim 10] wherein said abrasion resistant material comprises a tool steel alloy.

However, the Examiner maintains the taking of Official notice that such materials are old and well known in the art and provide various well known benefits including

superior strength and durability. Dawson (e.g., see the claims, particularly claims 4 and 21) and Gaddis (see the abstract) each disclose examples of cutting members comprising tool alloy steel. Therefore, it would have been obvious to one having ordinary skill in the art to use the subject materials to make the cutters of Wright or Raetz for the well known benefits including those described above.

It is noted that the common knowledge or well-known in the art statement of the previous office action has been taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. See MPEP § 2144.03.

Response to Arguments

11. Applicant's arguments in the Appeal Brief filed December 23, 2009 have been fully considered but they are not persuasive for at least the reasons previously argued.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark F. Dexter whose telephone number is (571)272-4505. The examiner can normally be reached on Mondays, Tuesdays, Thursdays and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571)272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Boyer D. Ashley/
Supervisory Patent Examiner, Art Unit 3724

/Clark F. Dexter/
Primary Examiner, Art Unit 3724

cfd
March 18, 2010